The Court: The question is, do you know anything about these records of the Beverley Country Club?

The Witness: Well, I do know this, that the same transfer company that brought my records brought theirs up in the same box. I sent mine to the transfer company and the transfer company picked theirs up and made one shipment.

The Court: Did you have anything to do with packing any of the records?

The Witness: No, sir.

The Court: Of the Beverley Country Club?

The Witness: No, sir.

Q. The Beverley Country Club records were at the Beverley Country Club, were they not? A. Yes, sir.

(475) Mr. Fennelly: Now, your Honor, I object to all of the records of the Beverley partnership on the ground that the use is a violation of the Fourth and Fifth Amendments of the Constitution.

The Court: Does that complete the statement of your objection on that ground?

Mr. Fennelly: Yes. I have other objection; I did not know whether you wanted to rule on that—

The Court: Very well; I will overrule it on that ground.

Mr. Fennelly: On 177, it is beyond the period covered by the indictment. It is a letter of 1950.

The Court: Let me see the exhibit.

(Exhibit handed to the Court.)

The Court: Overruled.

Mr. Fennelly: I object to 183 for identification on the ground that it is a duplicate of 158, it is a copy,

and that the witness has already testified as to the facts in addition.

The Court: May I see 183?

(Exhibit handed to the Court.)

The Court: Overruled. They may be received, all of them.

The Clerk: That was Government's Exhibits—was it 173, counsel, through—

(476) The Court: 173 through 183. All objections are overruled and they may be received in evidence.

(Government's Exhibits 173 for identification through 183 for identification received in evidence.)

Direct Examination by Mr. MacMahon (Continued):

Q. Mr. Murphy, based on Government's Exhibits 173 through 183, have you prepared a schedule showing the investment of Frank Costello in Beverley Country Club, Inc. and in the Beverley Country Club partnership? A. I have.

Mr. MacMahon: Would you mark it, please?

(Marked Government's Exhibit 185 for identification.)

(477) Q. I show you Government's Exhibit 184 for identification and ask you if that is the schedule which you prepared? A. Yes, sir.

Q. Would you state what the schedule—

Mr. MacMahon: I will offer it first.

At this time the Government offers 184 for identification.

Mr. Fennelly: Your Honor, may I add to my objection, please, that there has been no foundation laid either as to these books having been kept in the regular course of business.

The Court: You may examine with respect to that.

Q. Mr. Murphy, did you keep the books for Beverley Country Club and Beverley Corporation? A. I kept the general ledgers and the voucher registers, all under my supervision.

Q. Did those general ledgers and voucher ledgers reflect entries from the casino summary sheets? A. They were reflected once a year.

Q. Were these books kept in the regular course of the business of the Beverley Country Club partnership and Beverley Country Club, Inc.? A. The general ledgers and voucher registers, cash books, yes.

(478) Q. And the other documents which— A. Yes.

Q. Was it part of the business of Beverley Country Club partnership and Beverley Country Club, Inc. to keep such records? A. Yes, sir.

Mr. MacMahon: I offer them.

The Court: Any other objection?

Mr. Fennelly: No further objection.

The Court: Very well. The objection is overruled. They may be received in evidence.

(Government's Exhibit 184 for identification received in evidence.)

The Court: I see you have photostats there to pass to the jury.

Mr. MacMahon: Yes.

The Court: And, of course, that is in accordance with the suggestion I made this morning.

Mr. MacMahon: Yes, your Honor.

The Court: We are going along so slowly, I wonder if it wouldn't save time if you were to just read the exhibit to the jury?

Mr. MacMahon: I plan to in just a moment. I wanted to finish—

The Court: I mean, instead of having the exhibits passed around among the jury—

Mr. MacMahon: Yes.

(479) The Court: —I think, if you should read that, we would make a little better time.

Mr. MacMahon: All right, your Honor, yes.

Q. Mr. Murphy, I ask you to refer to Exhibit 158 in evidence and to Exhibit 183 in evidence and to state how much of Government's Exhibit 158, which is a check for $19,960.03, what part of that is interest and what part principal? A. $3,140.52 is interest, $16,891.51 principal.

Q. That is a payment to Frank Costello? A. Payment to Frank Costello.

(Marked Government's Exhibit 185 for identification.)

Q. Mr. Murphy, I show you Government's Exhibit 185 and ask you to identify it? A. Social Security record of Beverley Country Club, Inc. for 1948.

Q. Would you refer to Exhibit 185 and tell me whether the checks shown on Exhibit 157 in evidence are all the salary checks Frank Costello received from Beverley Country Club, Inc.?

The Witness: Would you repeat that again?

Q. Is Exhibit 157 all the salary checks Frank Costello received from Beverley Country Club, either the partnership or the corporation?

The Court: In what period?

(480) Mr. MacMahon: In any period, your Honor.

The Witness: I believe he received some checks in 1950.

Mr. MacMahon: No, up to 1940—December 31, 1949.

The Witness: Oh!

(A pause.)

A. There is no record of any checks in 1948.

Q. So those are all that are reflected in your records?

A. To the best of my knowledge, yes.

Q. Mr. Murphy, would you take the cash receipts book of October 10, 1946?

The Court: This is what, Exhibit 162?

Mr. MacMahon: Exhibit 162, your Honor.

A. All right, sir?

Mr. MacMahon: I would like to have it marked, your Honor.

The Court: That is 162 for identification.

Mr. MacMahon: Yes. I want to mark this particular page, your Honor, 162-A, if we don't have a 162-A.

(Marked Government's Exhibit 162-A for identification.)

Mr. MacMahon: At this time the Government offers Exhibit 162 and 162-A in evidence.

(481) The Court: Are you offering the whole book or just the page?

Mr. McMahon: Just the page is all I am interested in, but perhaps Mr. Fennelly would like the whole book.

The Court: If he does, I am sure Mr. Fennelly will tell me, but I would like to know what you are offering.

Mr. McMahon: I am offering 162-A.

The Court: 162-A.

Mr. Fennelly: I thought I heard him offer them both, but I have no objection.

Mr. MacMahon: 162-A received.

(Marked Government's Exhibit 162-A in evidence.)

The Court: You may substitute a photostat of that, if you wish.

Mr. MacMahon: Thank you, your Honor.

The Clerk: What about 162?

The Court: 162 remains merely for identification. 162-A, the offer was amended to include only the page, and the page has been received without objection.

Mr. MacMahon: Mark this envelope.

(Marked Government's Exhibit 186 for identification.)

Q. Mr. Murphy, I show you Government's Exhibit 186 for (482) identification and I ask you to identify it and the contents thereof in a general way? A. It is an envelope, U. S. Department of Justice, and it includes duplicate voucher checks, monthly statements with bills attached to

them, canceled checks, the reports from the bar and the restaurant, daily reports from October 10 from the restaurant and the bar.

Q. Of what? Of what company? A. 1946, it would be the partnership.

Q. Beverley Country Club partnership? A. Partnership, October 10, 1946.

Q. Is there a recap sheet for that day among those papers, Mr. Murphy? A. Yes, sir, there is. I am sorry.

Q. Would you describe that, please?

The Court: All the papers in Exhibit 186 refer to the date of October 10, 1946.

The Witness: October 10, 1946.

The Court: Very well.

A. There are bills prior to that date but paid on that day. That is a sheet from the casino dated Thursday, October 10, 1946 showing the wins and losses, ins and outs, an accounts check of Beverley Country Club, Special Account, dated October 10, 1946.

Q. Referring to one of the daily summary sheets (483) of the casino previously marked Government's Exhibit 172. The one dated October 10, 1946 is that right? A. That is right.

Q. Now, Mr. Murphy, would you look in your book under the column "Food" for—

The Court: Which book?

Mr. MacMahon: That he has before him, your Honor, which is the cash receipts book.

The Witness: 162.

The Court: 162 for identification.

Mr. MacMahon: Yes. Page 162-A.

The Court: Very well.

Q. (Continuing) Under the column "Food" down on line 11, and tell me the item stated in the book there? A. $670.10.

Mr. MacMahon: May the record note that I am handing Mr. Fennelly a photostat of this page of the book?

The Court: Of Exhibit 162-A?

Mr. MacMahon: Yes, your Honor.

The Court: Very well.

Pardon me, just a minute. Let me see that.

Q. Do you find there, Mr. Murphy, an item $670.10? A. I do.

Q. Now, would you refer to the contents of Exhibit 186 and state what documents you have to support the (484) entry of $670.10 under the column "Food"? A. Well, that—

Mr. Fennelly: I object to it as immaterial and irrelevant.

The Court: What is the relevance—well, materiality I suppose. Anything in the exhibit is relevant. What is the materiality of it?

Mr. MacMahon: Your Honor, I intend to impeach the record.

The Court: You intend to what?

Mr. MacMahon: Impeach the records of the casino.

Mr. Fennelly: If your Honor please, might I point out to you that Mr. Costello was neither an officer nor a director, and the books would not be binding on any stockholder, which is all he was.

Mr. MacMahon: May I point out, your Honor, that at this period which we are now covering Mr. Costello was a partner.

Mr. Fennelly: Is this a partnership record?

The Court: Do you propose to show that the correct figure should be another one?

Mr. MacMahon: Your Honor, I propose to show that there is substantial underlying data to support the entries in these books, that there is no underlying (485) data to support the entries in the casino books, none whatever.

The Court: Very well. I will allow it.

Q. All right, Mr. Murphy, would you tell me what you have in the way of underlying documents to support the $670.10 item shown in Government's Exhibit 162-A under the column "Food," line 11? A. This will come from the detail of the checks from the dining room and the cashier's reports with the summaries and recaps.

Q. First of all what do you have? Do you have a cash register tape? A. Yes, sir.

Q. Do you have adding machine tapes? A. Yes, sir.

Q. Do you have dining room checks? A. Yes, sir.

Q. And have you made a note of how many cartons of dining room checks were produced pursuant to the subpoena? A. Yes, sir. I have a memorandum of that, I counted, if I may refer to it.

Q. You may refer to it and state for me how many cartons of them were produced? A. 53 cartons.

Q. All similar to Government's Exhibit 166 for identification? A. Dining room checks and bar checks.

Q. Is that right? A. That is right.

Q. What else do you have to support that figure? A. This is a cashier's summary ticket, this is a (486) breakdown between food and liquor.

Q. Yes? A. And breakage. We have the dining room checks showing the totals, the cashier's tapes, the adding machine tapes.

Q. These dining room checks, Mr. Murphy, are numbered in sequence, are they not? A. Yes, sir.

Q. And they show each item of food purchased, is that right? A. Yes, sir.

Q. They show the waiter number, is that right? A. That is right.

Q. The number of persons at the table, is that right? A. Yes, sir.

Q. And table number, is that right? A. Yes, sir.

Q. They contain items as small as 45 cents, is that right? A. Yes, sir.

Q. What else do you have to support that figure? A. Well, that is where that figure probably comes from. These are the bar checks.

Q. And those support the entry in the book? A. That is right, there is the entry for food.

Q. What is the entry for beer that day, beer and liquor? A. Four fifty five.

Q. You have bar checks to support that entry? A. That comes from the dining room checks, those are dining room sales broken down between food, beverage (487) and liquor.

Q. And you have cash register tapes? A. They are the same cash-register tapes that are on the dining room tape.

Q. I see. I notice you have an item over there accounts receivable, $26.85 and underneath it, $5.55. What do you have to support that? A. They will come from the cashier's reports. They will be on one of the cashier's reports, a record of it. This is part of the work that was done by the office up there.

Q. And what do you have here? What are you referring to? A. I am trying to see where that comes from. At the bottom you will see, recap, the totals of the cashier's recap, $958.60, $26.85 debit as a charge.

Q. You are referring to cashier's summary statement? A. That is right.

Q. Signed by the cashier, is that right? A. Signed by the cashier.

Q. Summarizing the bar checks, is that right? A. No. Those would be the dining room checks.

Q. Dining room checks? A. That is right.

Q. Now, Mr. Murphy, what do you have to support the expenses for that day that were paid that day? (488) A. The cash disbursements, the disbursements for that day?

Q. Yes, sir. A. Canceled checks.

Q. Yes? What else? A. Voucher, duplicate voucher checks.

Q. What else? A. I have the statements and bills.

Q. Now, Mr. Murphy, are the casino receipts for October 10, 1946 entered in the cash receipts book? A. No, sir, not this, not Exhibit 162.

Q. Are they entered at any day in Government's Exhibit 162 on a daily basis? A. Oh, not on a daily basis, no, sir.

Q. How often are they entered? A. At the end of the year the account would be entered on the books through the journal.

Q. Are the entries in Government's Exhibit 162 kept in ink? A. Yes.

(489) Q. Would you refer now, Mr. Murphy, to the Casino recap sheet for that day October 6, 19—October 10, 1946? A. Yes, sir.

Q. Mr. Murphy, I notice an item under "Craps—in $19,904." What underlying records do you have to support that entry? A. Mr. MacMahon, the only records my office got were those daily sheets that we summarized once a month.

Q. Did you ever see any underlying record to support these entries? A. I did not.

Q. Were you ever asked to prepare any system of accounting of internal controls to support these entries? A. No, sir.

Q. Were you asked to prepare such a system of accounting for the restaurant? A. I did it for the restaurant, yes, sir.

The Court: No. The question is, were you asked?

The Witness: Yes, I was asked.

The Court: By whom?

The Witness: By Mr. Kastel when I installed the system.

Q. Now, will you tell us, under the column "Out"—

Mr. Fennelly: May we have the time fixed for that, please?

(490) The Court: Yes.

Q. When did Mr. Kastel ask you? A. When I first did work for the Beverley Country Club and they started preparing the club and when the club opened I began to install the restaurant general books and ledgers and the control system.

The Court: When was that?

The Witness: Approximately; it began, I would say, in November, '45, and they opened December 4, 1945, and then it went on into—the first report was filed in April, 1946, and we were setting up the records and getting them going during that time.

Q. Mr. Murphy, at my request have you prepared a memorandum showing how many cartons of these various

underlying documents for the restaurant were produced pursuant to the subpoena? A. I have, sir.

Q. Would you refer to it, please? A. Yes, sir.

Q. And state the number. A. There are 53 cartons of dining room—

Mr. Fennelly: Just a minute. I object, your Honor, unless they mark all of these cartons for identification.

Mr. MacMahon: Your Honor, I submit that to do so would clutter the record needlessly.

(491) The Court: Overruled.

Q. Go ahead, Mr. Murphy. A. 53 cartons of dining room and bar guest checks, 9 cartons of paid bills, 2 cartons of requisition, 2 cartons containing canceled checks, check stub books, duplicate voucher checks, duplicate deposit slips, regular account, samples on door count; 1 carton daily statements of casino operations; I think the box says "Summary of casino operations 12/4/45 through 12/31/53," containing canceled checks, books, containing check stubs, bank statements and pass books.

Q. Mr. Murphy, I notice, referring to the casino recap sheet for October 10, 1946, that it has an out column, "Craps, $13,922." Do you have, or did you ever see any underlying supporting data for that figure? A. I did not, sir.

Q. I notice that it has a column "Net Win or Loss, $5,982." Did you ever see any underlying supporting data for that figure? A. I did not, sir.

Q. Do you know how many crap tables there were at the Beverley Country Club? A. Well, I would say that there was generally one, sometimes two.

Q. I notice under the column "Wheels, In, $487." Did you ever see or do you now have any underlying data (492)

to support that figure? A. The only records I have are the summary sheets that were forwarded to me, the daily sheets which are summarized.

The Court: What do you mean by "daily sheets"?

The Witness: I would pick them up once a month or they would send them downstairs to the—

The Court: Was a sheet like that made out for each day?

The Witness: For each day.

The Court: And would somebody in the casino report it profit or loss and the total play?

The Witness: That is right. And once a month we would pick the sheets up and summarize them.

Q. No underlying data? A. That is what we would pick up.

Mr. Fennelly: I don't know what we mean by underlying data.

The Court: Neither do I, Mr. Fennelly.

Mr. Fennelly: I have never known of a place where you go in and buy chips where they give you a receipt for them, in Monte Carlo or the Copacabana wheel, or Montevideo, or—

The Court: I will take your word for that.

Q. I show you, Mr. Murphy, one of the folders (493) from Exhibit 172 for identification. Would you read what that states on the face of it? A. Casino Summary Sheet September '49.

Q. What is that a summary of? A. Well, all it contains is the record of the in and out and the expenses.

Q. They are stated to be summary sheets? A. There is no heading on the sheets, Mr. MacMahon.

Q. There is a heading on the envelope, isn't there? A. There is a heading on the envelope.

Q. That was kept on all of these envelopes, was it, on these folders? A. Similar one was.

Mr. Fennelly: Your Honor, these aren't part of the records. I would like to point out that Mr. Costello was neither an officer or director of the corporation, and not—

The Court: These are corporate records.

Mr. MacMahon: I happened to pick one in 1949. I am sure the same thing obtains in 1946.

The Court: Before we go any further about this, Mr. Fennelly's objection raises an interesting question in my mind.

By the Court:

Q. Mr. Witness, did you ever do any accounting work for any other casino besides this one? (494) A. Yes, sir, I did.

Q. How many others? A. There were two others.

Q. Were they owned by the defendant— A. No, sir.

Q. —or anybody connected with him? A. No, sir.

Q. As a result of your experience in conducting—making up and keeping accounts of the Beverley Country Club and the other two casinos mentioned, do you think that you are able to tell us what the practice is in the keeping of accounts for a gambling casino? A. I couldn't say that, sir, because we would just take them from the records that they gave us.

Q. You don't know whether that is the practice? A. I would say in some of the ones that I kept in New Orleans two of them were the same, or practically the same.

The Court: All right.

By Mr. MacMahon:

Q. Mr. Murphy, was it on the basis of these recap sheets that you made the annual entries into the regular books of the company? A. We would, once a month, pick up the statements and incorporate them in the monthly reports that were rendered Beverly Country Club, and once a year the entries were made on the general ledger, journal and the general ledger books.

(495) Q. Were the entries on the casino recap sheets kept in pencil or in ink? A. The ones I am looking at were kept in pencil.

Q. Do you know of any that were kept in ink? A. I think they were all kept in pencil, according to my memory.

Q. Referring to recap sheet for the dining room, I ask you was that typed or in pencil or ink? A. This recap sheet summary is in ink.

Q. What about the recap sheet for the dining room? A. This is the one you are referring to (indicating)?

Q. No, the recap sheet for the dining room. No, the regular recap sheets. A. That is statistical report. Been typed in.

Q. Recap for the dining room. A. After these records were prepared, the statistical report was prepared and typed in.

Q. Was that a statistical report recapitulating the receipts, disbursements and so on for the dining room? A. No, showing the moneys taken in from the dining room, the service bar, circular bar, the house check, the hat check, number of dinners served in the dining room, total amount of money, what it was last week, the increase or decrease this week.

Q. Show number of steaks that were eaten that day? (496) A. It doesn't. Shows one dinner, two or three dinners, two dinners.

Q. How about steaks, top sirloin, how many? A. Yes, it does, 16—9—9.

Q. How about sirloins? A. 16.

Q. Does it show the amount taken in at the hat check? A. Yes.

Q. How much was that? A. $11.30.

Q. Mr. Murphy, do you know whether the casino made any loans? A. Yes, I do know they would make loans.

Q. Did you ever see any accounts receivable for the casino? A. I have never seen an accounts receivable of the casino.

Q. Did you ever see any I.O.U.s or underlying data to support loans? A. Not to my recollection.

Q. Did you prepare the income tax returns for the Beverley Country Club? A. I did.

Q. Both the partnership returns and the corporate returns? A. I did.

Mr. MacMahon: Mark these, please. Mark them as separate exhibits.

I am about through, your Honor. Another five minutes.

The Witness: Mr. MacMahon, can we clear some (497) of this before it goes all over (indicating books and records on ledge of witness stand)?

(Books and records removed from witness stand.)

The Witness: Want to leave it there (indicating)?

Mr. MacMahon: Yes, put it back in the envelope.

(Marked Government's Exhibit 187 through 191 for identification, respectively.)

Mr. MacMahon: Your Honor, at this time the Government offers certified copy of the income tax

return for the Beverley Country Club for the taxable year ending November 11, 1946, which is Government's Exhibit 187 for identification;

A certified copy of the Beverley Country Club, Inc. income tax return for the year ending November 30, 1947, which is Exhibit 188 for identification;

A certified copy of Beverley Country Club, Inc. tax return for the year ending November 30, 1948, which is Exhibit 189 for identification;

A certified copy of the income tax return of the Beverley Country Club, Inc. for the year ending 11-30-49, which is Government's Exhibit 190 for identification;

A certified copy of the income tax return of the Beverley Country Club for the taxable year (49-8) ending 11-30-50, which is Exhibit 191 for identification.

The Court: Was 187 a return for the partnership?

Mr. MacMahon: Yes, your Honor, it is a partnership income tax return.

The Court: All the others were for the corporation?

Mr. MacMahon: That is right, your Honor.

Would you mark this, please, 172-B?

(Marked Government's Exhibit 172-B for identification.)

(A pause.)

Mr. Fennelly: I have no objection to these, your Honor, with the exception that on the first page of Exhibits 188 through 191 you will see notations of the Revenue Bureau that I object to.

The Court: You mean these stamps?

Mr. Fennelly: That is right.

The Court: I take it you are not offering those?

Mr. MacMahon: No, your Honor.

The Court: I should think they could be blocked out, couldn't they?

Mr. MacMahon: We will block them out. We will be happy to.

The Court: You could paste some opaque substance (499) over them and block them out.

Mr. MacMahon: All right.

The Court: They are received.

(Government's Exhibits 187 to 191 for identification received in evidence.)

The Court: Now, ladies and gentlemen, we will adjourn until tomorrow morning at 10.30.

Remember the instruction I have been giving you: Don't talk about the case among yourselves or with anybody else, and keep your minds completely open until all the evidence is in and the case is submitted to you, if it is, under the instructions of the Court.

Ten-thirty tomorrow morning.

(Adjourned to April 14, 1954, at 10.30 a.m.)

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(500) New York, April 14, 1954,
10.30 a.m.

(Trial resumed.)

(Jury present.)

Charles B. Murphy—for Government—Direct

CHARLES B. MURPHY, resumed.

The Clerk: If there are any witnesses present in the court room at this time, they will please retire to the witness room.

Direct Examination by Mr. MacMahon (Continued):

Mr. MacMahon: Would you mark that 172-A, please?

(Marked Government's Exhibit 172-A for identification.)

Mr. MacMahon: May the record note, your Honor, that 172-A comes from the envelope identified as 186 for identification?

Mr. Fennelly: Excuse me: What is the number of the envelope?

Mr. MacMahon: 186. It is October 10th underlying vouchers.

Q. Would you identify 172-A for me? A. 172-A is the daily report of the casino dated Thursday, October 10, 1946.

(501) Mr. MacMahon: I offer 172-A in evidence.

Mr. Fennelly: Are you offering the check?

Mr. MacMahon: No, I am not offering the check.

Mr. Fennelly: No objection.

The Court: What was that, the daily report of what?

Mr. MacMahon: October 10, 1946, casino summary sheet.

(Marked Government's Exhibit 172-A in evidence.)

Q. Mr. Murphy, referring to Government's Exhibit 172-A in evidence, would you tell us what the "In" column means? A. To the best of my knowledge "In" column means money that came in to the club from the games, from the tables.

Q. What does the "Out" column mean? A. That is money that was charged out to the games or paid out to the customers.

Q. And the "Net Win or Lose" column, what is that? A. Difference between the two, either win or loss for the night.

Q. I notice there is one headed over in the left-hand margin "Craps." How many crap tables were there, to the best of your recollection? A. Two.

Q. I notice there "Wheel." Does that refer to roulette wheels? (502) A. Yes, I imagine it does.

Q. How many roulette wheels were there, to the best of your recollection? A. I would say three.

Q. I notice it has "bird cage." What is a bird cage and how many of them were there? A. I imagine bird cage was black jack. I don't know. There was one black jack table there.

Q. Mr. Murphy, I notice in the "out" column, which you say is the amount the game is charged with, the figure $13,922. That is an odd figure, isn't it, Mr. Murphy? A. Yes, sir.

Q. As an expert accountant, would that require memoranda, underlying memoranda, to reach that figure? A. I think it would require memorandums of what was going out at different times, yes, sir.

Q. On the "In" column I notice the figure is $19,904, again an odd figure. Would that require memoranda underlying it? A. It probably would, sir.

Mr. MacMahon: Your Honor, may I circulate Exhibit 172?

The Court: Something attached to it that you didn't offer?

Mr. MacMahon: I don't want to offer the check. Could I remove the check?

(503) The Court: Suppose you pin it back.

Mr. MacMahon: With a paper clip.

The Court: Can't you read it? The difficulty is—if you read it once, all the jury will get the contents; then you may show it to the jury—if you pass it around, it means that 15 people have to read it individually.

Mr. MacMahon: All right.

(To the jury) Just look at it.

The Court: You may read the contents and the jury will get the contents just as well and you will save a great deal of time.

Mr. MacMahon: I will read this now.

(Mr. MacMahon reads to the jury from Government's Exhibit 172-A.)

Q. Mr. Murphy, were any of the memoranda which you say were necessary in order to reach the figure shown on Government's Exhibit 172-A under the "In" and "out" columns produced in response to the subpoena? A. No, sir.

Q. Did you ever see any such memoranda? A. No, sir.

Mr. MacMahon: Your Honor, at this time the Government offers the contents of Exhibit 186 for identification which the witness has previously (504) identified as the checks, supporting data, dining room and bar checks, etc. for the entries made

in the regular books of account of the Beverley Country Club partnership for the date October 10, 1946.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 186 for identification received in evidence.)

Q. Mr. Murphy, I show you Government's Exhibit 172-B for identification and ask you to identify it in a general way, looking at the first and last sheets as to the dates. A. Those are the same casino sheets with the date Monday, March 1, 1946.

Q. Would you look at the last one to see what period they cover? A. Rather, May 1, 1946.

The Clerk: What kind of sheets?

Mr. MacMahon: Casino summary sheets.

The Clerk: Thank you.

A. Through Friday, May 31, 1946.

Q. In other words, Mr. Murphy, those are the casino summary sheets for the month of May, 1946? A. That is right, sir.

Mr. MacMahon: I offer them, your Honor.

Would you mark that 172-C? Would you staple (505) the sheets, please?

(Marked Government's Exhibit 172-C for identification.)

Mr. MacMahon: And this one, 172-D.

(Marked Government's Exhibit 172-D for identification.)

Mr. MacMahon: This one, 172-E.

(Marked Government's Exhibit 172-E for identification.)

Mr. Fennelly: I object to it as irrelevant and—

The Court: I didn't hear you, Mr. Fennelly.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled. That is B?

Mr. MacMahon: 172-B, your Honor, yes.

(Government's Exhibit 172-B for identification received in evidence.)

The Court: Pardon me. Just a minute. Let me see that. What is that? A summary sheet?

These are the ones for May that you just had him identify?

Mr. MacMahon: Yes, your Honor.

The Court: All right.

Q. Mr. Murphy, I show you Government's Exhibit 172-C for identification and ask you to tell me again (506) in a general way— A. Those are the same casino summary sheets for Saturday, March 1, 1947, through Monday, March 31, 1947.

Q. In other words, those are the casino summary sheets for the month of March— A. For the month of March.

Q. —1947? A. 1947, yes, sir.

Q. Would you identify Government's Exhibit 172-D? A. That is June, 1948, starting June 5, 1948, somebody—

wait a minute. That is June 1, 1948, Tuesday, through Saturday, June 5, 1948, regular casino summary sheets.

The Court: June, 1948?
The Witness: June 1, 1948.
The Court: Yes. But the month of June, isn't it?
The Witness: June.
Mr. MacMahon: One week, your Honor.
The Court: Oh, one week.
June what?
The Witness: June 1, 1948 through June 5, 1948.
The Court: Thank you.

Q. Would you identify Government's Exhibit 172-E? A. Those are casino summary sheets for the month of January, 1949.

Mr. MacMahon: At this time, your Honor, the (507) Government offers Exhibits 172-C, 172-D and 172-E.

(A pause.)

Mr. Fennelly: I object to them as incompetent. They are corporation records of which the defendant was neither an officer nor a director.

Mr. MacMahon: May I be heard on that, your Honor, in the absence of the jury?

The Court: Very well. Ladies and gentlemen, would you withdraw now?

You may withdraw.

(Jury retires.)

Mr. MacMahon: Your Honor, it is clear from the 1939 testimony of Frank Costello before the

Federal Grand Jury sitting in this district he has stated that his representative in New Orleans, Louisiana, where this country club is located, is Phil Kastel.

We have shown that that relationship has continued in Crescent Music Company. It continued in Louisiana Mint Company.

The testimony here is that it was Kastel who delivered Costello's share of the profits of Louisiana Mint Company to Mr. Murphy for transmittal to Mr. Costello.

Kastel is, on the testimony shown here, the president and active manager and head of operations (508) of the Beverley Country Club, both the partnership and the corporation.

So he then, your Honor, is Costello's representative on this corporation, and these records, therefore, were made under that management and under that representation.

Apart from that, your Honor, I suggest that this is a fiction. Here we have the same people who formed the Beverley Country Club partnership who become in exactly the same proportion in interest the partners of the Beverley—the stockholders of the Beverley Country Club; and to hold that these records are corporate records and, therefore, not binding in any way on this defendant is to exalt that fiction away beyond realities of the case.

Mr. Fennelly: Your Honor, basically I believe that the Prosecutor is in error. The testimony in 1939 before the Grand Jury was that he had a representative down there. I have no recollection of him saying that Mr. Kastel was that representative. Mr. Murphy has been a representative under a power of attorney to send checks to Mr. Costello,

but none of that would have any bearing on the situation.

We have a corporation here in which there are five stockholders. Mr. Costello was neither an (509) officer nor a director, and it hasn't been shown that he had a single thing to do with any of the books and records, that he gave any instructions, and the books of the corporation are not binding on a stockholder, and that is the issue before your Honor.

I can give you an authority on it, if you would care to have one.

The Court: Aren't the books being introduced solely for the purpose of showing the money that was made in this Beverley Country Club and to show the amount that was transferred as his brokerage share to the defendant?

Mr. Fennelly: That is a different matter.

The Court: All right.

Mr. Fennelly: The books of account—

The Court: That is the fact, is it not?

Mr. MacMahon: Yes.

The Court: That the books are offered for that purpose.

This underlying data, as I understand it, is supposed to supplement that, to show the manner in which the books were kept.

Mr. Fennelly: But—

The Court: These papers which are now challenged are being identified and offered through the witness who (510) says he was retained by the corporation—first by the partnership, then by the corporation—to keep the books.

As I recall his testimony yesterday, at the time he identified the three exhibits that are now being challenged, 172-C, 172-D and 172-E for identifica-

tion, he said that they were the very documents from which he made the entries in the books which are now in evidence.

Your objection ran to the competence, and I think that that testimony establishes their competence and I overrule the objection.

Mr. Fennelly: Perhaps you had better have the jury back and proceed before them. I find papers in all these exhibits that I want to note on the record.

The Court: Very well. Yes.

(Jury present.)

(Marked Government's Exhibits 172-C, 172-D and 172-E in evidence.)

Mr. Fennelly: May it appear, your Honor, that on Exhibit 172-B—

Mr. MacMahon: It is already in evidence.

Mr. Fennelly: —which was offered as 2—

The Court: 172 which?

Mr. Fennelly: B.

(511) The Court: B? It has already been received, has it not?

Mr. Fennelly: That is right. I wanted to call your Honor's attention to the fact that they were offered as the daily summary and that there is tucked among them one—those are papers for May, summary sheets for the month of May, 1946.

The Court: May, 1946, yes.

Mr. Fennelly: There is tucked under them a yellow sheet in ink, marked "Expenses of Casino" paid by regular account through April 31, 1946.

Mr. MacMahon: The Government withdraws that sheet. It was not intended—

The Court: It is not fastened with the others, and let the record show it is a yellow sheet and the other sheets in the exhibit are all white sheets, in printed form.

Mr. MacMahon, will you now physically remove from the exhibit the paper which Mr. Fennelly has called to the Court's attention?

Mr. Fennelly: That in Exhibit—

The Court: Just a minute. Let the record show that that yellow sheet to which Mr. Fennelly has just referred as having been incorporated in Exhibit 172-B has now physically been removed from the exhibit, and (512) at no time up to now has the exhibit as a whole been shown to the jury.

Mr. Fennelly: May I have it marked for identification?

The Court: The sheet—

Mr. Fennelly: Yes.

The Court: —that was in there?

Mr. Fennelly: Yes.

The Court: You may, indeed.

(Marked Defendant's Exhibit F for identification.)

Mr. MacMahon: Your Honor, may I examine the witness preliminarily on this? I am told by my assistants at counsel table that these sheets do in fact belong with the exhibits offered.

The Court: Well, now, wait a minute. One thing at a time. Let Mr. Fennelly state what his position is, and then you may continue with the examination, and if you desire to include them again after that examination you may do so.

Mr. Fennelly: The Government has just withdrawn them. I don't know whether they want them

or don't want them. But I want the record to note as to Exhibit 172-C—

The Court: 172-B contained a paper which is now marked Defendant's Exhibit F. It has been physically withdrawn, but it has been marked at your (513) request. I understood that you were about to say that there was a similar piece of paper—

Mr. Fennelly: That is what I am coming to.

The Court: —in 172-C.

Mr. Fennelly: 172-C, which are the daily summaries for the month of March, 1947, I find a yellow sheet entitled "Expenses of casino paid by regular account February, 1947," and I ask that that be marked for identification.

(Marked Defendant's Exhibit G for identification.)

The Court: What was it, the expenses of the casino for what period?

Mr. Fennelly: March, 1947. Oh, no. Excuse me, February, 1947, the yellow sheet.

The Court: From C.

Mr. Fennelly: That is right. And in Government's Exhibit 172-E I find a yellow sheet tucked in which I can't read on account of the stapling, and it says—the only part I can see says "Taxes due by casino." And there is also a hotel bill of the Hotel Roosevelt tucked in there. And another yellow sheet entitled "Expenses of casino paid by regular account."

The Court: Do you want those marked?

Mr. Fennelly: I would like those marked.

The Court: Why don't you leave them there? (514) They may remain in the exhibit. I under-

stand Mr. MacMahon is going to question the witness about all of these and they remain in.

Q. Mr. Murphy, I show you Government's Exhibit—or Defendant's Exhibit F for identification, which was a paper found in Government's Exhibit 172-B in evidence.

Would you tell me what Government's Exhibit—what Defendant's Exhibit F for identification is and what it was doing in Government's Exhibit 172-B? A. This represents the expenses of casino paid by regular account, charged to the casino on regular accounts books. The casino would then reimburse the regular account for these expenses through the summary sheets listing of expenses.

Q. The summary sheets contained in Government's Exhibit 172-B show these expenses shown on Defendant's Exhibit F? A. Either that or in a total, refunding it to the regular account.

Q. So that Defendant's Exhibit F is an integral part of Government's Exhibit 172-B? A. It is, sir.

Mr. Fennelly: Just a minute, I object to it as a conclusion of the Prosecutor.

(515) The Court: He is asking if that is so.

Mr. MacMahon: The witness has testified that it is.

The Witness: It is, sir.

The Court: Would you look at 172-B and tell us, show us where the data which appears on Defendant's Exhibit F for identification appears on the summary sheets which constitute Exhibit 172-B for identification?

The Witness: On Wednesday, May 15, 1946, in expense sections, casino, March and April expense, $638, which is the total on this sheet, your Honor.

The Court: So that it now appears that the paper

which has been marked Defendant's Exhibit F for identification is an underlying or supporting document to the daily summary sheet for the casino for Wednesday, May 15, 1946, which paper is part of Exhibit 172-B for identification?

The Witness: Yes, sir.

The Court: Very well.

Do you desire now to restore it to the exhibit and include it in your offer of 172-B?

Mr. MacMahon: In just one moment, your Honor.

Q. And 172—rather, Defendant's Exhibit F, is a supporting document for the expenses of the casino, is that right? A. That is right.

(516) Mr. MacMahon: I offer it, your Honor, restored to the original.

The Court: Restore the document and include it. Yes, very well.

Do you press your objection?

Mr. Fennelly: No, your Honor, as long as I have a satisfactory explanation. Thank you.

The Court: Very well.

Q. Now, Mr. Murphy, I show you Defendant's Exhibit G for identification, which was—

The Court: Let the record show that that was a yellow sheet that had appeared in Exhibit 172-C as offered.

Q. Would you state what Defendant's Exhibit G is? A. That is another record from the restaurant to the regular account which the casino reimbursed the restaurant for. Q. And does that appear in any of the documents included in Government's Exhibit 172-C? A. Yes, on Wednesday,

March 15th—March 5, 1947, in the expense column, appears the amount $6,827. This sheet shows $6,826.85.

Q. Then Defendant's Exhibit G for identification again is a supporting document for an expense charged to the casino in Government's Exhibit 172-C in evidence? (517) A. Yes.

Mr. MacMahon: I offer it, your Honor.

The Court: Do you press your objection as to that?

Mr. Fennelly: No objection.

The Court: Very well.

The Clerk: Excuse me. Mr. MacMahon, it is being restored to the exhibit?

Mr. MacMahon: Restored to the exhibit and offered as part of it.

The Court: Now, there were some—

The Clerk: No. E, your Honor, the hotel bill and two—

Mr. MacMahon: Oh, I am sorry.

The Court: Is that E?

The Clerk: That has not been marked yet, Judge.

The Court: Wait a minute. This—

The Clerk: Yes, but it wasn't marked; it was just discussed. H for identification Mr. Fennelly said was taxes due by casino, bill of Hotel Roosevelt and expense of casino. He described it.

The Court: Yes. It was something that appeared in Exhibit 172-E, was it not?

The Clerk: That is right.

Mr. MacMahon: May I question the witness about it?

(518) Q. I notice here in Government's Exhibit 172-E a half page yellow sheet entitled "Taxes due by casino." Would you describe, identify that, Mr. Murphy, and tell us what it is? A. This is a similar sheet from the restaurant

charging the casino with various expenses and appears on Saturday, January 29, 1949, statement, $1171.

Q. Referring, then, to one of the sheets contained in Government's Exhibit 172-E. A. 172-E.

Q. And again it is an expense item? A. That is right.

Q. I refer, Mr. Murphy, to what appears to be a hotel bill of the Roosevelt Hotel, New Orleans, consisting of 2 sheets, also contained in Government's Exhibit 172-E for identification.

Would you tell us what that is and what it is doing in there? A. That supports the item of office at room No. 560 $350 expenses.

Q. That again is an expense charged to the casino? A. That is right, paid by the casino.

Q. And shown in Government's Exhibit 172-E? A. 172-E.

Mr. MacMahon: I offer it, your Honor.

(519) The Clerk: It is already included in there.

Q. Mr. Murphy, I show you another half page accounting sheet—full page accounting sheet appearing in Government's Exhibit 172-E entitled "Expenses of casino paid by regular account."

Would you tell us what that is? A. That is a similar sheet listing the expenses which support the item Casino Expense $3,033 on Friday, January 7, 1948, contained in Government's Exhibit 172-E.

Q. Mr. Murphy, in these exhibits where we have had these expenses supported by underlying documents, have there been anything to support the receipts? A. None other than the figures in the books.

Q. You are referring to the summary sheets? A. To the summary sheets.

Q. Mr. Murphy, I hand you Government's Exhibits 187 through 191 in evidence, which are the income tax returns of the Beverley Country Club partnership and corporation.

Charles B. Murphy—for Government—Direct

Would you refer to the income tax return for the year 1946 and tell the Court and jury whether or not the restaurant lost money that year, and, if so, how much? A. The statement contained—

> Mr. Fennelly: Excuse me. May we have the (520) number, because there were two tax returns, my records show, on fiscal years covering part of 1946.

Q. Would you refer to the exhibit number, Mr. Murphy? It is on the back. A. This is Exhibit No. 187 and is a tax return for the year—fiscal year December 3, 1945, ending November 30, 1946, of the Beverley Country Club.

Q. Tell me what it shows with respect to the restaurant operation. A. The restaurant shows a loss.

Q. Of how much? A. $101,093.67.

Q. What does it show with respect to the casino? A. The casino shows a profit of $140,189.93.

Q. And the loss is deductible, is it not? A. That is right.

Q. Would you refer to the year 1947 and state the exhibit number?

> The Court: What was the profit in the last one?
> The Witness: $140,189.93.

A. Exhibit No. 188 is a corporation return of Beverley Country Club, Inc. for the year, fiscal year, 12-1-46 through 11-30-47.

Q. What does it show? A. I beg your pardon, sir?

Q. What does it show with respect to the operation of the restaurant and the casino? (521) A. The restaurant shows a loss of $148,328.61.

Q. What about the casino? A. The casino shows a profit of $203,819.98.

Q. And the loss is again deducted? A. That is right, sir.

Q. Would you refer to ~~1948? A. Exhibit~~ 189 is a return of the Beverley Country Club, Inc. for the period 12-1-47 through 11-30-48.

Q. What does it show with respect to the restaurant? A. It shows the restaurant loss of $131,210.25.

Q. What about the casino? A. $133,508.95 profit.

Q. And again the loss is deducted, Mr. Murphy? A. Yes, sir.

Q. What about the year 1949? A. Government's Exhibit 190 covers the period—Beverley Country Club, Inc.—for 12-1-48 through 11-30-49.

Q. What does it show with respect to the casino? A. It shows dining room loss of $162,491.25. It shows casino profit $240,091.48.

Q. Again the loss is deducted, Mr. Murphy? A. Yes, sir.

Mr. MacMahon: Your witness, Mr. Fennelly.

The Court: We will take our recess now.

(Recess.)

(522) *Cross Examination by Mr. Fennelly:*

Q. Mr. Murphy, you are a certified public accountant, I believe you testified? A. Yes.

Q. Were you ever a teacher of accountancy at any university? A. I taught at night at Loyola University of the South, New Orleans.

Q. That is in New Orleans? A. New Orleans, yes.

Q. For how many years, sir, did you teach? A. I would say approximately seven years.

Q. I take it without question that you are a man of honor and integrity? A. I think I am, sir.

Q. And you represented—you did the accounting work for these companies through the years to which you have testified? A. Yes, sir.

Q. The Beverley Country Club had a restaurant, did it not? A. Yes, sir.

Q. And is it fair to say that it was one of the finest restaurants in New Orleans? A. That is the opinion, that it was one of the finest. That is my understanding, it was one of the finest.

Q. And it had a sign over it, "Beverley Country Club"? A. They had a sign at the entrance, "Beverley Country Club."

Q. It was open to everyone? A. Yes, sir.

Q. And so was the casino? A. Yes, sir.

(523) Q. Wide open? A. Yes, sir.

Q. The restaurant had captains? A. Yes, sir.

Q. And all of the service that goes with a top quality restaurant? A. I would say so.

Q. And the patrons who visited the Beverley Country Club were the finer people of New Orleans, weren't they? A. I would say they were.

Q. And they visited the casino, too? A. Yes, sir.

Q. During 1946 to 1949 were these books and records of Beverley inspected by agents of the Internal Revenue Bureau? A. They were for some of the years, yes, sir.

Q. Weren't they for the year 1946? A. Yes, sir.

Q. And they looked at all the records? A. Yes, sir.

Q. Didn't they pass 1946? A. Yes, sir.

Q. And between 1946 and 1949 did any agent of the Internal Revenue Department tell you that you should keep any of the records of the Beverley Country Club in any other fashion than the way they were kept? A. During what year, sir?

Q. During 1946 and 1949. A. No, sir.

Q. Mr. Costello was neither an officer nor a director of the Beverley Country Club, was he? A. Not to my knowledge, sir.

(524) Q. You do know, do you not, because you had the

books in—you saw the books—the minute book? A. Yes, sir.

Q. And there were five—he was a stockholder? A. Yes, sir.

Q. And he was one of five stockholders? A. Yes, sir.

Q. Who retained you to do the work on Beverley Country Club? A. Mr. Philip Kastel.

Q. Did Mr. Costello have anything to do with the keeping of the books and records of the Beverley Country Club? A. Not to my knowledge, sir.

Q. Did he ever talk to you about keeping any of the records of the Beverley Country Club? A. No, sir.

Q. Now, isn't it a fact that you sent Mr. Costello information from New Orleans to New York about the salary that he was to receive? A. Yes, sir, I think I sent letters of transmittal to him.

Mr. Fennelly: Will you mark this, please?

(Marked Defendant's Exhibit H for identification.)

Q. And is this one of the letters that you sent to Mr. Costello transmitting his salary to him? A. That is a letter I sent him transmitting the (525) salary for the months of June, July, August and September, 1949.

Mr. Fennelly: I offer it in evidence.

Mr. MacMahon: Are you offering both?

Mr. Fennelly: Yes.

Mr. MacMahon: No objection.

(Defendant's Exhibit H for identification received in evidence.)

The Court: Let me see it again.

(Defendant's Exhibit H handed to the Court.)

The Court: All right.

Q. And this is your signature on this letter, Mr. Murphy, is it not (handing)? A. Yes, sir.

(Mr. Fennelly reads Defendant's Exhibit H to the jury.)

Mr. Fennelly: Could I have Government's Exhibits 1 and 2, please?

(Mr. MacMahon hands to Mr. Fennelly.)

Q. Now, I believe that you testified yesterday that the first time Beverley Country Club paid any taxable income to Mr. Costello was in the year 1948, is that right? A. No, the partnership year November 30, 1946.

Mr. Fennelly: Could I have that return, too? That is Exhibit 4.

(526) (Mr. MacMahon hands to Mr. Fennelly.)

The Court: Read that last answer to me, Mr. Reporter.

(Record read.)

Q. And what was the amount that Beverley Country Club paid Mr. Costello in 1946? A. Beverley Country Club made no payment to Mr. Costello in '46; it was the distributable share of the profit from the partnership.

Q. Now, what was the share of the profits of Mr. Costello in the partnership for 1946? A. I couldn't tell you that, sir, unless I saw the return.

Mr. Fennelly: Has the Government the return?

(Mr. MacMahon hands to Mr. Fennelly.)

Q. I am handing you Government's Exhibit 187, Beverley Country Club income tax return for the fiscal year December 3, 1945, through November 30, 1946, is that right? A. That is right. Government's Exhibit 187 is the partnership return of Beverley Country Club for the period December 3, 1945, through November 30, 1946. It shows distributable share to Mr. Frank Costello of $8,229.25, and his pro rata of charitable contributions $410.

(527) Q. You say, although that amount was Mr. Costello's share in the profits for that period, actually Beverley did not pay it out to him; is that right? A. That is right, sir.

Q. Now, I show you Government's Exhibit 4, which is the income tax return for Mr. Costello for 1946, and refer you to reported income from partnerships on Schedule 3—Schedule E, line 3, and will you tell me whether or not if it is not a fact that Mr. Costello reported that income in his tax return? A. Schedule E, income from partnerships, estates, trusts and other sources shows on line 3, "Other Sources, Miscellaneous Income of $8,229.25."

Q. That is the same amount that you testified was his share in the profits of the Beverley Country Club for that period, is that right? A. For the period ending November 30, 1946, yes, sir.

Q. I notice that on the return, whoever prepared it, alongside of that amount is just marked "Miscellaneous," isn't that right? A. That is right, sir.

Q. And the Government would know, from looking at the tax return of the Beverley Country Club, Exhibit 187, that that was the source of his money reported in Mr. Costello's return, wouldn't they? (528) A. They should, sir.

Q. Now, let us take the next year which I think you said was—no profit to him in '47, was there? A. I beg your pardon, sir?

Q. Was there any profit to Mr. Costello in '47? A. 1947 it was a corporation.

Q. Well, were there any dividends paid to him? A. No, sir.

Q. Now, in 1948, then, was there some money paid to Mr. Costello? A. Yes, sir.

Q. And can you tell us how much that was, or do you want some exhibit? A. I would like to refer to the exhibit.

Q. What do you want? The income tax return of Beverley? A. No. there is a check, voucher check showing the payment of principal and interest, duplicate voucher check.

Mr. Fenneliy: May we have the exhibit, please?

(529) Mr. Fennelly: May we have the exhibit, please, No. 183?

(Exhibit handed to Mr. Fennelly.)

Q. I show you Exhibit 183 and ask you to tell us how much money was paid from Beverley, year 1948? A. Total of $19,960.03.

Q. What part of that was taxable income? A. Interest on the mortgage at 3½ per cent from 12/1/46 to 5/31/48, $3,140.52.

Q. And would you look, please, on the income tax return of Mr. Costello for 1948, Government's Exhibit 2, and tell us whether or not that amount is reported in his income tax for 1948? A. There is an amount entered here, total of interest included from Government obligations, amount of $3,114.52.

Q. You mean whoever wrote it on the return put it on that column? A. That is right.

Q. But the amount corresponds, does it not, with the amount that Beverley Country Club paid him for interest in 1948? A. There is a difference of $26.

Q. That is right. Do you know what that difference is? A. I don't sir.

Q. During 1949 did Beverley Country Club pay Mr. Costello a salary? A. Yes, sir.

(530) Q. And what was the total amount of the payment? A. From looking at the Social Security return yesterday, I believe—Social Security record—

Q. Excuse me. Let me give you an exhibit, if you will just tell me what one you want. A. It would be in the Social Security record for 1949.

Mr. Fennelly: May I have that, please?

(Exhibit handed to Mr. Fennelly.)

Mr. Fennelly: Let me have Exhibit 157.

(Exhibit handed to Mr. Fennelly.)

Q. I give you the Social Security register, which is 156, and I also give you these checks, 157, which I suggest may be easier to work from. Weren't they the checks in payment to Mr. Costello? A. Yes, sir.

Q. Also a check a hundred and fifty—no. What is the total of those checks, sir? A. Gross salary, $12,000.

Q. And you say gross? A. Yes, sir.

Q. What is the net? A. From which was deducted Social Security and withholding taxes, netting $10,376.40.

Q. Would you look at Government's Exhibit 1, which is the income tax return of Mr. Costello for the year 1949 and tell us whether or not that amount is not reported in Mr. Costello's income tax return? (531) A. One line 2, there is Beverley Country Club, New Orleans, Louisiana,

withholding taxes, amount of $1,593.60. Total wages, $12,000.

Q. That is the amount Beverley paid him, is it not? A. That is right, sir.

Mr. Fennelly: Could I have the bank account? Let me have Exhibit 43, please, and 40.

(Exhibits handed to Mr. Fennelly.)

Q. Now, Mr. Murphy, there has been some testimony here about underlying records or memoranda. I show you Government's Exhibit 40, which is a bank statement of the Corn Exchange Bank for Mr. Costello. Now, banks keep very careful and accurate records, don't they? A. They do, sir.

Q. I refer you to a column of withdrawals, and isn't it a fact that when a bank, without any Recordak system, to take pictures of checks—they return the checks to the customer? They always return the checks to the customer, don't they?

Mr. MacMahon: Your Honor, this witness is not qualified as an expert banker. I think it is common knowledge, though, that banks return checks to customers.

Mr. Fennelly: Is that an objection?

The Court: I don't know. You may proceed.

Q. Banks always return the checks to the customer? (532) A. Is that a question, sir?

Q. Yes. A. Yes, according to my knowledge, they do, sir.

Q. If a bank didn't have a Recordak machine to take pictures of checks, and there has been testimony here that they didn't, a bank would have no underlying records to

support the entry on the face of their bank statement, would they? A. I couldn't answer that, sir. I wouldn't imagine they would if the original records went back and no pictures, they would have no other record.

The Court: Did you ever work in a bank?

The Witness: No, sir.

The Court: Do you know how it is that they handle their records? Any experience?

The Witness: I had audited no banks.

The Court: Never worked as a clerk?

The Witness: No.

The Court: As a teller?

The Witness: No, sir.

The Court: As a bookkeeper?

The Witness: No, sir.

The Court: As ledger clerk?

The Witness: No, sir.

The Court: Very well.

(533) Q. Don't you know that the only record a bank has of the withdrawal of a check is the check itself?

Mr. MacMahon: Your Honor, I object. The witness has no basis—

The Court: Sustained.

Mr. Fennelly: Could I have this envelope that you had with all this—186, is it? A. Referring to all expense items?

Mr. Fennelly: I don't know what is in it. I will find out.

(Exhibit handed to Mr. Fennelly.)

Q. Now, in keeping records in any business, the method is arrived at to see that it is properly done so you will

have checks on various operations of the business, isn't that so? A. Yes, sir.

Q. For instance, running a restaurant you would need a check as to what a patron of the restaurant ordered, wouldn't you? A. Yes, sir.

Q. And you would have to have some control on the kitchen to see that they didn't take out a filet mignon when the patron ordered baked beans, wouldn't you? A. Certainly should, sir.

Q. Therefore, you need checks on the kitchen to see that the right food is taken out for the check? A. Yes, sir.

(534) Q. On these summary sheets for the casino—that was prepared daily, was it not? A. Yes, sir.

Q. By the cashier in the casino at Beverley? A. Yes, sir.

Q. And it reflects the amount that was taken in? A. Yes, sir.

Q. On each day? A. Yes, sir.

Q. Prepared at the end of the day? A. I imagine it was, sir.

Q. And these are the sheets that you worked on, on the company's books? A. Yes, sir.

Q. Did you not? A. I got those sheets at the end of the month.

Q. And they show the amount that went out? A. Yes, sir.

Q. And they show on which game it applied? A. Yes, sir.

Q. And they have a printed column of expenses? A. Yes, sir.

Q. And they show the bankroll the balance of the day? A. Yes, sir.

Q. And they show the bank balance? A. Yes, sir.

Q. They show you the cash on hand— A. Yes, sir.

Q. —each day? A. Yes, sir.

Q. And they show you the total of the two; right? (535) A. Yes, sir.

Q. And they show the balance in the bank at the beginning of the day? A. Yes, sir.

Q. And checks deposited? A. Yes, sir.

Q. And the total of those? A. Yes, sir.

Q. And they show you the balance in the bank as at the end of the day? A. Yes, sir.

Q. And from those sheets you could determine and did determine the amount of profit or loss in the casino, did you not? A. Yes, sir.

Q. Now, there was some observation that those daily summary sheets were in pencil. Now, turning to these restaurant records, these are in blue pencil, aren't they, this part of the exhibit I am showing you, which were apparently what a waiter or head waiter writes down what somebody orders? A. All of them are in blue pencil, yes, sir.

Q. And for the restaurant, the requisition on stores, storeroom requisition, those are in pencil too, aren't they? A. Yes, sir.

Q. Now, on this slip of paper which I noticed is typed, what is that? A. That is the statistical report which was prepared by the office downstairs showing the business of the day before.

Q. It shows you the number of people who have (536) come into the place? A. It does, sir.

Q. And the number who came into the casino? A. Yes, sir.

Q. Now, I see a heading "House Checks"? A. Yes, sir.

Q. And under that, printed in the form, the names of Mr. Kastel, Brown, Tamson, Rosetti, Torre, Mrs.—no, Mr. Rosetti. What does that indicate? I see an item there $11.45 opposite the name Mr. Brown. What does that mean? A. Those are checks that the club picked up.

Q. Well, will you explain to the jury what you mean by

that? A. I mean the checks that the club paid for or were free checks, signed—that Mr. Brown happened to be one of the assistant managers there; Tamson, I don't know whether Tamson was in the kitchen or not; Rosetti I think was a matron, and Torre, I don't know who he was. He probably was in the kitchen.

Q. But do I understand you correctly then that if one of these people ordered something a check would be made out and that would be what you would refer to in here as a house check? A. Yes, sir.

Q. Now, Mr. Costello's name does not appear among any of those, does it? A. No, sir.

Q. By the way, how many times have you seen Mr. (537) Costello in your life, to the best of your recollection? A. I don't think it is over twenty ti s, fifteen, twenty times.

Q. And do I understand you correctly that the restaurant and the casino were run from a bookkeeping, an accounting, aspect as two separate units? A. Departments, yes, sir.

Q. And if th Country Club—rather the restaurant department advanced some money on behalf of the casino, the casino would be charged with it, would they not? A. Yes, sir.

Q. This batch of material that I hold here, they are bills—

The Court: Being part of 186.

Q. That is part of 186 from this envelope. They are bills that were sent to the Country Club, were they not? A. They are bills and statements sent to the Country Club.

Q. And they are not records of the Country Club but bills sent in? A. That is right, by suppliers; Holmes bill, Holsum, J. Campbell & Company, Inc. The person from whom the club bought merchandise.

Q. If these items pertained to the restaurant, for example food, they would be charged to the restaurant? A. Yes, sir.

(538) Q. And if they were items that were properly chargeable to the casino they would be charged against the casino? A. Yes, sir.

Q. Mr. Murphy, on Beverley, you were the one who told Mr. Costello and sent him the checks from Beverley upon which he would pay tax? A. I think — I don't know whether I sent him all the checks, but I would advise either Mr. Costello or Mr. Wolf as to what the income was.

Q. And the item of nineteen thousand, in 1948, $19,960.03 that you spoke about, $16,819.51 of that was repayment of a loan, wasn't it? A. Yes, a repayment of the mortgage, of the purchase price balance when they became incorporated.

Q. And that wasn't income, was it? A. No, sir.

Mr. MacMahon: I object to that.

The Court: It is answered.

Mr. Fennelly: Could I have your exhibit again, please, 158? Could I have 183?

Q. I show you Government's Exhibit 183. That is the check, is it not, for the $19,960.03 to Mr. Costello in 1948? A. Yes, sir.

Q. And doesn't it appear right on the face of that exhibit of the Government that sixteen thousand odd dollars of that is a repayment of a loan? (539) A. It says "Payment on principal $16,819.51."

Q. And that was the repayment of a loan, was it not? A. A partial repayment, sir.

Q. Yes, but I mean all of the sixteen thousand odd dollars was a partial repayment on a loan of a larger amount, is that right? A. That is right, sir.

Q. And the only part of that check that represented income was the interest item of $3,142. and some cents, is that correct? A. $3,140.52; yes, sir.

Q. Now, are there other books of Beverley Country Club that were sent from New Orleans that have not been identified here? A. There are some Social Security returns—Social Security files and I think some advertising data.

Mr. Fennelly: Would the Government please produce the rest of the files of Beverley Country Club so that I may have them marked for identification?

Mr. MacMahon: Your Honor, they are very voluminous files. They weigh over three and a half tons. We have examined them. They have been here for Mr. Fennelly to examine for well over a month, in fact for about five weeks. They have no relevancy to this case whatever, except the mass of material, and the physical problem of moving three and a half tons into this courtroom, your Honor, I submit is a needless (540) cluttering of the record.

Mr. Fennelly: Your Honor, I submit that if the prosecutor subpoenas these records all the way from New Orleans that I would think that it would be well to identify them.

The Court: It would if they are going to be used in the trial, and I understand the prosecutor's offer to come to this: That they have been here for five weeks and that they will remain here, they are in the building, and I take it that counsel for the defendant may examine them at whatever place in the building they are.

Mr. MacMahon: Certainly, your Honor.

The Court: Very well. You have that opportunity continuing and if any part of them in your opinion has relevance to any matter as to which testimony

has come in, or if you wish to introduce them for any purpose, you may bring them up and have them marked. But I certainly will not encumber this record with the marking for identification of some, what is represented as, three and a half tons of records, until I see some more useful purpose to be served. And if there is any record that you think bears on anything that this witness has testified to, you may inquire about it and inquire whether it is here, and it will be produced, (541) I am sure, if it is.

Mr. Fennelly: Well, my problem would be, I don't want Mr. Murphy to return to New Orleans and not have these records identified, so that if I determine that I would have to use any part of them I would think that they should be identified so I could then—

The Court: That is the kind of practical problem that arises in all large cases, and I am sure that you may look at them and arrange to have them identified, and probably, since they have been subpoenaed, the Government might work out a stipulation with you with respect to any records which are records of Beverley or whatever other records there are.

By Mr. Fennelly:

Q. Did I understand correctly that there were some 88 cartons of records sent from New Orleans? A. I wouldn't know for certain but I believe there were around 80 some-odd cartons.

Q. Those records, with the exception of your own work sheets, did not come from your possession, do they? A. My work sheets and my copies of inventory records, and I think the checkbook, last checkbook of Beverley, and some

bills, that came from my office. The rest of the books, general ledgers, voucher registers (542) and everything else came from Beverley Country Club.

Mr. MacMahon: May I inquire whether that is Beverley Country Club, Inc.?

The Witness: Beverley Country Club, Inc.

Q. You mean they were stored there? A. They were, yes, sir, they were stored there.

Q. Some of the records were partnership records of Beverley Country Club, were they not, at the time it was a partnership? A. Yes, sir.

Q. Now, then, you testified, I believe, that—something about the books of the Bayou Novelty Company? A. I testified that I had had them in my possession at one time, yes, sir.

Q. When was the last time that you ever had the books of the Bayou Novelty Company in your possession? A. Sir, it is hard to remember and I, frankly, don't, but in 19—

Q. Approximately? A. I think it was 1944, there was a tax case.

Q. Some ten years ago, was the last time you saw the books? A. Frankly, that is my last recollection of the books. I don't know what happened to them.

Q. That was in some court in New Orleans? A. Some of the records were down there, yes, sir.

Q. When did Bayou Novelty Company go out of (543) business? A. I didn't handle that, sir, I couldn't give you the date, but it must have been some time around '35, I imagine.

Q. Would that be your best recollection as to when it ceased business, approximately? A. Approximately then, '34, '35.

Q. And there was some testimony about Pelican Novelty Company. When did you last see the books of the Pelican Novelty? A. That was a Tax Court case, again, in 1950.

Q. The last time you saw the records was in court in New Orleans? A. That is, to the best of my knowledge, the last time I saw them.

Q. I believe you have testified as to income tax returns of Pelican.

Mr. Fennelly: Could I have the tax returns, please, of Pelican that were introduced?

(Exhibits handed to Mr. Fennelly.)

Q. I show you Government's Exhibit 109, which is a partnership return for Pelican Novelty Company for fiscal year April 1938, ending March 31, 1939. Weren't there subsequent returns filed to that? A. I filed subsequent returns, yes, sir.

Mr. Fennelly: Would the Government please produce the subsequent returns filed for Pelican Novelty (544) Company?

Mr. MacMahon: Your Honor, we represented the other day that certificates that no such returns are in existence are forthcoming. They have been destroyed.

The Court: The answer is that the returns aren't here?

Mr. MacMahon: Aren't here, your Honor, and I understood they have been destroyed.

The Court: All right.

Q. Mr. Murphy, in these files of your work sheets that you sent to the Government would there be copies of any returns of Pelican? A. I think that for the year '39 there

is a typed copy of both the Federal and the State, which I didn't prepare, but 1940, I believe I have in the file there penciled copies of the State return.

Q. The ones I would like to look at—I believe there is a return from March 1, 1939, which would be the one immediately following the exhibit I showed you. A. April 1, '39.

Q. Would you please look at your work sheets? A. I haven't them here, sir.

Mr. Fennelly: Will the Government produce them, please?

(545) Mr. MacMahon: What are you referring to, Mr. Fennelly?

Mr. Fennelly: I am referring to tax returns for Pelican Novelty Company for the period subsequent to the one you put in evidence.

Mr. MacMahon: Your Honor, at this time the Government offers 182 for identification, a certificate that Pelican did file a partnership return for the fiscal years ended March 31, 1939 and March 31, 1940, which were assigned certain serial numbers, and certifying that these returns have now been destroyed in accordance with the authority for disposal of records contained in Schedules 35, 37 and 52 and disposal list No. 38, all of which have been approved by the National Archives and the Congress.

(Marked Government's Exhibit 192 in evidence.)

Mr. Fennelly: My question is, would the witness please look at his work papers and see whether or not he hasn't in his work papers copies of income tax returns of Pelican for the—two returns subse-

quent to the one which I have just shown him, which is Exhibit 109.

The Witness: My files are in the Government's possession, sir.

Mr. Fennelly: Would the Government please (546) give the witness his file?

Mr. MacMahon: Your Honor, we are sending someone out to bring those in at this time, but may I suggest to Mr. Fennelly that the income which he seeks is reflected on Government's Exhibits 110 and 111, which I now hand him.

Mr. Fennelly: You may suggest, sir, but you happen to be mistaken for my purpose.

Would the Government please give the witness his file?

Mr. MacMahon: Your Honor, I have stated we are in the process at this moment—

The Court: I don't hear you.

Mr. MacMahon: One of the men from the table has gone to get those files.

The Court: Very well.

Do you know now, Mr. Fennelly, whether you want all the witness' work papers—

Mr. Fennelly: No.

The Court: —or are there some others?

Mr. Fennelly: I haven't seen them I am sorry, I haven't seen his work papers.

The Court: No, I was wondering whether there are some you intended to ask to have produced.

Mr. Fennelly: Yes, there are.

(547) The Court: Because we might let the jury go now, to return at 2.15, and give the Government an extra few minutes to get whatever additional records you want, and we might save time later.

Mr. Fennelly: Yes. I can give the dates. There

are two returns, your Honor, covering fiscal year April 1, 1939 through March 31, 1940; April 1, 1940 through December 31, 1941.

Mr. MacMahon: Those are Pelican?

Mr. Fennelly: No, '40. The last date should be '40.

Mr. MacMahon: Pelican Novelty?

The Court: You have asked for the witness' work sheets on Pelican?

Mr. Fennelly: Yes.

The Court: Are there any others of his work sheets that you wish produced?

Mr. Fennelly: No, your Honor. I want solely these returns from—

The Court: You don't want the whole volume of all his work sheets?

Mr. Fennelly: No. I believe there are copies of the returns in his work files.

The Court: It looks like we are doing better than I thought (indicating).

(548) Mr. MacMahon: Here you are, sir (handing papers to Mr. Fennelly).

The Court: Will you suspend for just a moment, while I check my notes with the Clerk's record of exhibits?

(A pause.)

Mr. Fennelly: Mark this.

(Marked Defendant's Exhibit I for identification.)

Mr. MacMahon: Your Honor, may the record note that Government's Exhibit 192, received in evidence, is as per the representation made by the Govern-

ment the other day that such a certificate would be forthcoming?

The Court: Oh, yes.

Q. Mr. Murphy, I show you Defendant's Exhibit I for identification and ask you if that is your work file? A. This is my file, yes, sir.

Q. Do you have in there any Federal income tax returns for Pelican Novelty Company? A. I have a copy of a 1938 return.

Q. Is that Federal or State? A. Federal, for March 31—fiscal year ended March 31, 1939, copy of the one, Exhibit 109.

Q. Have you a Federal income tax return for the fiscal year ending March 31, 1940? A. No, sir.

Q. Have you a copy of a State return for that (549) period? A. I have, sir.

Q. Pelican? A. I have, sir.

Q. Does that State return contain the same information that the Federal return contained? A. It should, sir, yes.

Q. And have you a Federal return there for the fiscal year ending—for the period, it is not a year, for the period from March 1, 1940 through December 31, 1940? A. I have one for April 1, 1940 through December 31, 1940.

Q. Excuse me. I meant April 1st. A. Yes, sir.

Mr. Fennelly: I offer those two returns in evidence.

Mr. MacMahon: May I examine preliminarily on those, your Honor?

The Court: Yes.

Preliminary Cross Examination by Mr. MacMahon:

Mr. MacMahon: These appear not to be marked, Mr. Fennelly.

Charles B. Murphy—for Government—
Preliminary Examination by Mr. MacMahon

Mr. Fennelly: No, I haven't marked them. They were marked for identification in the larger exhibit, which is I for identification.

The Court: They came out of I for identification, which the witness has identified as one of his work files.

(550) Q. Referring, Mr. Murphy, to the partnership return of the Pelican Novelty for the fiscal period beginning April 1—

Mr. Fennelly: 1939 is the first one.

Q. —1939 and ending March 31, 1940, will you state whether the State income tax shown on there would be deducted from the Federal income tax return? A. Sir, this is a partnership return. It just shows the distributive share of the income.

Q. Would you deduct the State Income tax from the Federal partnership return? A. Just an information return same as a Federal partnership return is an information return, showing distributive share of the profit or losses to the partner.

Q. That would also be true for the return, Louisiana State return, from April 1 through December 31, 1940? A. Yes, sir. They are information returns.

Mr. MacMahon: No objection.

Mr. Fennelly: That is the order they go in (indicating to the Clerk).

(Marked Defendant's Exhibit J in evidence.)

The Court: J is the return for what period?

Charles B. Murphy—for Government—Cross

The Clerk: Partnership return of Pelican Novelty Company, April 1, 1939 to March 31, 1940, fiscal (551) year.

(Marked Defendant's Exhibit K in evidence.)

The Court: For what period?
The Clerk: April 1, 1940—
The Court: '41?
The Clerk: December '40, it looks like to me. It looks like a cipher to me.
The Court: Is that correct?
The Witness: December 31, '40.
The Court: All right.

By Mr. Fennelly:

Q. Mr. Murphy, partnership returns are only information returns, are they not? A. That is what I consider them, yes.

Q. And they don't show any tax due? A. No, sir.

Q. In other words, partnerships as such are not taxed but the individual partner who receives the income is taxed, right? A. That is, the ordinary partnership, yes.

Q. And if a partnership is on a fiscal year basis, let us say ending June 1, 1953, and an individual partner is on a calendar year basis, when does the individual partner report his income from the partnership, which is on the fiscal year basis? (552) A. For the fiscal year that falls within his calendar year.

Q. So that if a fiscal year or partnership ends on, say, June 1, 1953, and it runs back in—from July 1, 1952 to June 1953, the partner would report his income from that fiscal year of the partnership in 1953, wouldn't he? A. Yes, sir.

Q. Now, I refer you to Defendant's Exhibits J and K,

the partnership returns of Pelican Novelty Company, and would you tell us if they reflect a loss on machinery? A. I didn't quite understand th t, sir.

Q. Do they reflect a loss on machinery? On machines? A. The partnership return April 1st, 1939 through March 31, 1940 shows a charge-off on machines cost of depreciated loss of useful value, Regulation Article 63, $15,534.

Q. Would you look at the other return? A. Return from April 1st, 1940 through December 31, 1940 marked "Amended Final Return," shows machines destroyed or abandoned $1,494.08, machines depreciated cost of loss of useful value, Regulation Article 63, $13,314.34.

Mr. MacMahon: Your Honor, may we have these machines identified? What kind of machines are these? (553) Sewing machines, or what are they?

The Witness: They were machines—

Mr. Fennelly: I don't think it is material.

The Witness: —that the Pelican Novelty had.

The Court: I don't either, but there isn't any mystery about it, surely, after all we went through for a long time the other day. But what difference does it make?

Q. Now, the share of that loss would be a deduction, would it not, to the individual partner? A. It would be a deduction from the partnership income arriving at the net profit or loss to be distributed, sir.

Q. And the partner, in arriving at his individual income, would be entitled to take his share, percentage, of that loss? A. Yes, sir, through the partnership return.

The Court: Suppose we take our luncheon recess. Now, ladies and gentlemen, we will adjourn until 2.15, and remember the instructions that I have given you, don't talk about the case among yourselves or

with anybody else, and keep your minds completely open until all the evidence is in.

(Recess to 2.15 p.m.)

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(554) AFTERNOON SESSION

(Jury present.)

CHARLES B. MURPHY, resumed.

Cross Examination by Mr. Fennelly (Continued):

Q. Are those Pelican returns there? A. Yes, sir.

Q. Now, will you tell me, referring to Government's Exhibit 110, which is the Kastel partnership return for 1939, whether that reflects income of some five thousand odd dollars? A. Yes, it reflects income of $5,459.90.

Q. Is that figure derived from the Pelican Novelty Company? A. Yes, Exhibit 109. Government's Exhibit 109, which is the Pelican partnership for the fiscal year ending March 31, 1939, shows income to Phil Kastel of $5,459.90. The same is reflected on the Phil Kastel partnership.

Q. Now, I show you Government's Exhibit 11, which is the Kastel partnership return for the year 1940 and ask you whether or not that shows any income? A. Shows income, from schedule attached, of $4,576.96.

Q. Would you look at the Pelican return for—which one of those is it? A. This is the first one, March 31, 1940.

(555) Q. Would you look at the Pelican returns and tell me which one of the exhibits that income is reflected from? A. The income is reflected, net income is reflected,

from income shown on Defendant's Exhibit J and from loss shown on Defendant's Exhibit K.

Q. Attached to Government's Exhibit 111, which is the Kastel partnership return for 1940, you have a schedule attached, showing a profit for the year ended March 31, 1940 of $9,210.05? A. Yes, sir.

Q. That income, as appears, is the income from the Pelican Novelty Company, is that right? A. Yes, sir.

Q. Do you have a loss reflected on there from the final return of Pelican Novelty Company for the fiscal period from March 1, 1940 to December 31, 1940? A. From April 1.

Q. April 1? A. Yes, sir, a loss.

Q. Of some four thousand six hundred? A. 4,633.09.

Q. That loss was due to loss on the machines, was it not, as reflected in the Pelican return? A. The Pelican return for the fiscal year ending March—rather, a short period, April 1, 1940 through December 31, 1940, shows a loss of five—11,582.70. Included as an item of deduction was the worthless (556) furniture abandoned, machines destroyed and abandoned, and machines depreciated, cost of, loss of useful life, totaling approximately $15,000.

Q. Although, in arriving at income on the Kastel partnership, you take the deduction for the loss, the cash distributable would still be there, if there was cash, would it not? A. If there was cash, yes.

Q. Well, now, let me see if we can explain it in a simple way. Assuming a partnership has a profit of, say, $10,000 and they have that cash in the partnership and during the year you have a loss on machinery of, say, $5,000. Now, for your tax purposes the net income under those circumstances would be $5,000, wouldn't it? A. You had a ten thousand profit—

Q. You had a ten thousand profit and a loss, say, on machines of $5,000. A. That is right, yes, sir.

Charles B. Murphy—for Government—Cross

Q. So your reportable income would be $5,000? A. Yes, sir.

Q. Now, if you had the cash of $10,000, despite that loss, the cash would still be there to be distributed to the partners of $10,000, isn't that right? A. Yes, sir, it would be that.

Q. So, even though the income upon which tax would (557) be payable would be only $5,000, there would be a distributable amount available to the partners of $10,000? A. Under that illustration, yes.

Mr. Fennelly: Now, could I have Exhibits 33, 35, 38, 110 and 111, and also 13, 14, 15, 16, 17?

I want 33, 35, 38, 110, 111. You have given me three of them. I have 33, 35 and 38.

Mr. MacMahon: You already have 111.

Mr. Fennelly: Could I also have 13 through 17?

Q. I show you Government's Exhibit 33, which is the partnership return of Kastel for the year 1936. Now, would you look at that return and tell me if it does not appear on there that Mr. Costello was a partner of the Kastel partnership? A. Yes, sir.

Q. And does that show what his distributive share would be? A. Yes, sir.

Q. For that year. And how much is it? A. $14,000 worth of earned income and the balance of net income minus the amount in column 3 which is the earned income is $64,955.83.

Q. Now, that is for the year 1936? A. Yes, sir.

Q. Now, I show you the income tax return of Mr. Costello for the year 1936, Government's Exhibit 15, and will you tell me whether or not he reported in that return income from the partnership of Kastel and the (558) amount that he reported? A. On line 7 of said income, his income

from Philip Kastel partnership in the amount of $78,955.83.

Q. I believe you testified on your direct examination that you were given the money in cash by Mr. Kastel to send to Mr. Costello? A. Not on these returns, sir.

Q. What year did that start? A. 1943.

Q. '43 you started.

The Court: May I see those two exhibits for a moment?

(Witness hands to the Court.)

Q. Now, I show you—

The Court: Would you wait just a minute, please?

Mr. Fennelly: Yes, your Honor.

The Court: Thank you, (returning exhibits to witness).

Q. Now, I show you Government's Exhibit 35, which is the partnership return of Kastel for the year 1937, and would you tell me whether or not that shows Frank Costello as a partner of the Kastel partnership? A. Yes, sir.

Q. And would you tell me the amount of income reported on that return, partnership return? (559) A. Total income?

Q. Yes. A. $132,923.88.

Q. Does the return show Mr. Costello's share of that income? A. Yes, sir.

Q. What is the amount? A. It is divided into two parts, one earned income and the other not earned income. Earned income of $14,000, other income of $52,461.94, total of $66,461.94.

Q. Now, would you look at the Government Exhibit 14,

which is the income tax return of Frank Costello for the year 1937, the same year, and tell me whether or not you find the income from the Kastel partnership reported? A. On line 6 of the return Philip Kastel, $66,461.94.

(560) Q. That is, it is reported that Frank Costello received from the Kastel partnership the amount you gave, is that right? A. That is a taxable income from the partnership.

Q. That's right. A. Yes.

Q. I show you Government's Exhibit 38, which is the Kastel partnership return for the year 1938, and will you tell us whether or not it appears that Frank Costello was a partner in that partnership. A. Yes, sir.

Q. Will you tell us what is the amount of income which is Frank Costello's share as shown by the Kastel partnership return? A. $22,323.07.

Q. I show you the income tax return of Frank Costello for the year 1938, Government's Exhibit 13, and would you tell us whether or not there is reported on that return the amount of income that Costello received from the Kastel partnership. A. Line 6 of that return shows Philip Kastel—Frank Costello's share being $22,323.07.

Q. That is the same amount that appeared on the Kastel partnership return as Costello's share? A. Yes, sir.

Q. I show you Government's Exhibit 110, the (561) partnership return of the Kastel partnership for 1939. Will you tell me whether it appears there that Frank Costello was a partner of the Kastel partnership? A. Yes, sir.

Q. Was there any income reported on there? A. Yes, sir.

Q. What is the share of Frank Costello? A. $2,729.95.

Q. I believe there is no Federal income tax return in evidence for Frank Costello for the year 1939 but there is a State, New York State return, and will you look at Exhibit 17, which is the New York State return of Frank

Costello for the year 1939, and tell me whether there is the same amount of interest—of income reported on that return by Mr. Costello. A. Under line 24, income from partnerships, is the amount of $2,729.95.

Q. I show you Government's Exhibit 111, which is the partnership return of Kastel for the year 1940. Can you tell me whether or not it appears on there that Frank Costello was a partner of the Kastel partnership? A. Yes, sir.

Q. Would you tell me whether it appears that the amount of income distributable to Frank Costello was returned? A. Yes, sir.

Q. Would you give us the amount? (562) A. $2,288.48.

Q. I show you Government's Exhibit 16, which is the New York State return of Frank Costello for 1940. Will you look at it and tell me whether or not a similar amount of income is reported by Frank Costello on that return? A. Line 24-A shows Phil Kastel partnership, $2,288.48.

Mr. Fennelly: Would the Government produce the Louisiana Mint Company income tax returns for the fiscal years ending 1943, 1944, 1945, 1946?

They haven't been introduced in evidence or marked for identification.

(Papers handed to Mr. Fennelly)

Mr. Fennelly: Would you mark for identification, please, a certified copy produced by the Government of the partnership return of Louisiana Mint Company ending November 30, 1943.

(Marked Defendant's Exhibit L for identification.)

Charles B. Murphy—for Government—Cross

Mr. Fennelly: Would you mark for identification the return of Louisiana Mint Company for the fiscal year ending November 30, 1944, a certified copy produced by the Government.

(Marked Defendant's Exhibit M for identification.)

Mr. Fennelly: Would you please mark for (563) identification the partnership return of Louisiana Mint Company for the fiscal period ending November 30, 1945, a certified copy produced by the Government.

(Marked Government's Exhibit N for identification.)

The Court: Would you look at M and tell me the period it is for?

Mr. Fennelly: M is for December 1, 1943 to November 30, 1944.

The Court: Thank you. N, now, is for the period ending—

The Clerk: 11-30-45.

The Court: November 30, 1945. Thank you.

Mr. Fennelly: Would you mark for identification certified copy of the partnership return of Louisiana Mint Company for the fiscal period ending November 30, 1946.

(Marked Defendant's Exhibit O for identification.)

Mr. Fennelly: Now, could I have, please—I must have lost my list of exhibits; Judge; could I have the income tax returns of Mr. Costello for '43

through 1946? They are Exhibits 10; 9, 7, 5. No, 4 instead of 5.

The Court: Isn't it 6 instead of 7?

Mr. Fennelly: You are right, your Honor. Numbers 4, 6, 8.

(564) The Court: And 10.

Mr. Fennelly: 10.

Q. I show you Defendant's Exhibit L for identification—

Mr. Fennelly: May I offer these in evidence, your Honor?

The Court: Yes. L through O?

Mr. MacMahon: Are they marked?

Mr. Fennelly: Yes. You produced them.

Mr. MacMahon: No objection, your Honor.

(Defendant's Exhibits L through O for identification received in evidence.)

Q. I show you Defendant's Exhibit L, which is the partnership return of Louisiana Mint Company for fiscal year ending November 30, 1943. Would you tell us the amount of income reported on that return? A. The total amount?

Q. Yes. A. $280,536.42.

Q. Now, who were the partners of Louisiana Mint as shown by that return? A. Philip Kastel, Frank Costello, A. J. Rickerfore, Thomas Hill and Peter Hand and Jack Lansky.

Q. Does it show the share of income for Frank Costello? A. Yes.

Q. And will you tell us what the amount is? (565) A. The ordinary net income $61,095.69. Let's see. I was looking at some figures on the side which don't apparently mean anything.

Charles B. Murphy—for Government—Cross

Q. Now I show you Government's Exhibit 10, which is the income tax return for the year 1943 of Frank and Loretta Costello, and will you tell me if there is reported on that income from Louisiana Mint Company? A. Yes.

Q. Would you tell us the amount? A. $60,813.43.

Q. Now, can you explain the difference in the figure between the one return and the other? A. There is a charitable contribution of $282.26, being Mr. Costello's pro-rata share.

Q. Now I show you Defendant's Exhibit M, which is the Louisiana Mint Company partnership return for the fiscal year ending November 30, 1944, and would you tell me what is the income of the Louisiana Mint Company as reported? A. $329,242.04.

Q. Will you tell us—

The Court: Pardon me just a minute. What is that figure again?

The Witness: 329,242.04.

Q. And would you tell us what the share of Mr. Costello is? A. Mr. Costello's share is $71,379.46. His share of the charitable contribution is $694.13.

(566) Q. Now I show you Government's Exhibit 8, which is the tax return for Frank Costello for the year 1944, and will you tell us whether there is reported on that return income from Louisiana Mint Company?

The Court: This is what exhibit you are referring to now?

Mr. Fennelly: 10, I think is the number.

Q. Isn't that right, sir? A. 8.

Mr. Fennelly: 8.

The Court: Yes, '44. Yes. Exhibit 8.

A. It shows Louisiana Mint Company $70,685.33.

Q. Now I show you Defendant's Exhibit N, which is the Louisiana Mint Company partnership return for the fiscal year ending November 30, 1945, and will you tell us the amount of income reported by Louisiana Mint Company on that return? A. $287,945.09.

Q. And what was Mr. Costello's share on that income? A. $62,087.64.

Q. Now I show you the income tax return of Frank Costello for the year 1945, Government's Exhibit 6. Would you tell me whether or not there is reported on that return the income from Louisiana Mint Company? A. It shows Louisiana Mint Company, $62,087.64.

Q. The same amount reported on the partnership (567) return, isn't that right? A. Yes, sir.

Q. Now I show you Defendant's Exhibit O, which is the partnership return of Louisiana Mint Company for the fiscal year ending November 30, 1946. Will you tell me what income is reported for the partnership Louisiana Mint Company? A. $94,934.43.

Q. And what is Mr. Costello's share of the income shown by that return? A. $19,335.25.

The Court: What is that? 19—

The Witness: $19,335.25.

Q. Now I show you Government's Exhibit 4, which is the income tax return of Frank Costello for the year 1946, and refer you to Schedule E, income from partnerships. Would you tell me whether or not there is income reported from Louisiana Mint Company for that year? A. It shows Louisiana Mint Company, $19,335.25.

Q. That is the same amount reported on the income tax return of the partnership, is that right? A. Yes, sir.

Q. Now, did you keep the books of Louisiana Mint Company? A. I did, sir.

Charles B. Murphy—for Government—Cross

Q. You kept them accurately? A. I think so, sir.

Q. Did Mr. Costello ever tell you how to keep the books? A. No, sir.

(568) Q. Did the revenue agents of the Internal Revenue Bureau examine the books of Louisiana Mint Company? A. Yes, sir.

Q. Many times? A. Yes, sir.

Q. And have they scrutinized them many times? A. I would think so, sir.

Q. To your knowledge, did any agent's report ever question the income of Louisiana Mint Company for the years 1943 through 1946?

Mr. MacMahon: Your Honor, if the witness knows.
Mr. Fennelly: I asked, to his knowledge.
The Court: Yes.

A. I have seen the reports on the Louisiana Mint Company of the examinations and there has been no question of income to my knowledge.

The Court: You say you have seen the reports. Do you mean reports—
The Witness: Rendered by the agents.
The Court: —by the agents?
The Witness: To the company.

Q. In connection with Louisiana Mint Company, did you send to Mr. Costello his share of the partnership profits? A. I have sent it to him or to Mr. Wolf's office.

Q. You sent that by check? A. The cash (569) withdrawals I sent by check to Mr. Costello.

Q. Did I understand you to testify on your direct examination that the money that was to go to Mr. Costello was given to you in cash by Mr. Kastel? A. Either by him direct or was sent over to the office.

Q. But was given to you in cash? A. Yes, sir.

Q. What has been described as these nice folding bills. And all of it given to you in cash has been reflected in Mr. Costello's income tax returns that I showed you?

Mr. MacMahon: I object.

Q. (Continuing) Isn't that right?

Mr. MacMahon: I object to the form of the question.

The Court: Overruled.

The Witness: Would you repeat the question?

Mr. Fennelly: Would you read the question?

(Question read)

A. Yes, sir.

Q. Now, on Louisiana Mint Company, the storekeeper, where one of these machines was installed, received a certain commission, did he not, on the amount that went into a machine? A. Sir, I would say yes from the records furnished (570) me by the company.

Q. And the collectors for the company, who went around to collect, also received a commission on the amount collected, did they not? A. Yes, sir.

Q. Now, do you know whether or not all of the books that have been produced here and records from Louisiana Mint Company have been either put in evidence or marked for identification? A. Well—

The Court: The question is: Do you know.

The Witness: The sample of daily report but there is a whole box of reports.

Mr. Fennelly: I would like to know whether the

Government has any records that have been sent here from New Orleans of Louisiana Mint Company that have either not been marked in evidence or for identification, so I may have them marked.

Mr. MacMahon: I make the same offer we made this morning.

The Court: Whatever you brought up is in whatever storage place in the building as you have all the rest of the records, and they will be made available to the defendant to examine and select whatever they wish to have marked or do with them. Very well.

(571) Mr. Fennelly: Then I take it there are records of Louisiana Mint Company here that haven't been marked for identification?

The Court: I don't understand Mr. MacMahon to go that far. I understand him simply to say that whatever has come up is here and may be examined by you or any of your delegates, and whatever you wish, may be marked, but we will not stop to inquire now as to the details of what records are here. We will take a recess this afternoon until Monday morning and that will furnish you a little while.

Mr. Fennelly: I will be given the privilege of searching the 88 cases?

The Court: Isn't that what you wanted?

Mr. MacMahon: A privilege he has had.

The Court: Or did you expect somebody else was going to search it for you?

Mr. MacMahon: May the record note that counsel for defense has been aware of the fact that he has had that privilege since your Honor granted an order requiring the production of these books?

The Court: That is raising another issue which we do not have to pass on.

Mr. Fennelly: It might also appear I haven't exercised the privilege.

(572) The Court: That is apparently so, but now everything appears that everybody wants to appear, and suppose now we try to get on with the witness.

Q. Mr. Costello had nothing to do with running the business of Louisiana Mint Company, did he? A. Not to my knowledge, sir.

Q. When did the Louisiana Mint Company cease operations, do you recall? A. I testified to that yesterday, I believe. The last receipt was the sale of a machine in August, 1946. I think that was the date. The last active collections, I believe, were in May '46.

Mr. Fennelly: Could I have Exhibit 154, please?

Q. Government's Exhibit 154 is Louisiana Mint Company return for the fiscal period ending November 30, 1947. That was a tentative return, sir, was it not? A. Yes, sir.

Q. I think you testified yesterday that no final return had ever been filed. A. Yes, sir.

Q. And that during the period that this return covers there was no income to Louisiana Mint Company, isn't that correct? A. Yes.

Q. They weren't doing business? A. That is right, sir.

Q. Were there some expenses for Louisiana Mint Company after it ceased to do business? A. Yes, sir.

(573) Q. Have you got a list of those, sir? A. There is a list in the cash book through '47.

Mr. Fennelly: Could I have the cash book, please, Louisiana Mint Company?

(Exhibit handed to Mr. Fennelly)

Q. I show you Exhibit 143. Is that the book you want? A. Yes.

Q. And can you tell us what the expenses were subsequent to December 1, 1946? A. I can tell you what they were from December 1, 1946, through November 26, 1947. Those are entered in the cash book.

The Court: That is the same period covered by the return?

The Witness: That is right, sir.

A. (Continuing) Those are disbursements; total $5,981.01.

Q. And no income? A. Yes, sir.

Q. Can you tell us for the period from December 1, 1947? A. I cannot, sir.

Q. You mean they aren't entered? A. They are not entered. There is no further record now.

Q. But there were some expenses? A. Some rent, telephone. For a while, a watchman's (574) salary.

Q. If a final return were filed for the period of this tentative return, that is, ending November 30, 1947, it would show a loss, would it not? A. Yes, sir.

Q. To Louisiana Mint Company? A. Yes, sir.

Q. Now, Mr. Costello as an individual partner would have a deduction for whatever loss there was, would he not?

Mr. MacMahon: Your Honor, I suggest that is a question of law to have such deduction.

The Court: Overruled.

A. Any loss shown by the partnership return Mr. Costello would be entitled to his distributive share.

Q. And the same would be so of any loss shown by the books, would it not? A. I beg your pardon, sir?

Q. The same would be so as to any loss shown by your books? A. Yes, sir.

Mr. Fennelly: Now could I have Exhibit 3, please?

Q. I show you Mr. Costello's income tax return for 1947, and would you tell me whether or not you see on there any loss taken by Mr. Costello in 1947 for his share in the loss of Louisiana Mint Company? A. No, sir.

(575) Q. Now, would you look at the books of Louisiana Mint Company and tell me whether or not in January of 1946 there was a payment to Mr. Costello? A. May I have the general ledger?

Q. I show you Government's Exhibit 144. Is that the general ledger of Louisiana Mint? A. Yes, sir.

The Court: What was the date in that question?
The Reporter: January of 1946.

A. Government's Exhibit 144, Frank Costello's drawing account shows an entry from Journal 9 in January 1946 of $10,125. Journal entry 9, Government's Exhibit 143, shows a total distribution to the partners of $45,000, which is December distribution and January, December 1945 and January 1946.

Q. My question is as to Mr. Costello, in January 1946. How much does it show? Ten thousand— A. $10,125. which was December and January distribution.

Q. Was that by cash or check? A. In cash to me, and I sent it by check to Mr. Costello, one check for—I imagine there would be two checks on that. It should have been a check, one check for $5,625 and a check for $4,500.

Q. Whose check? A. Either the bank's or my checks.

(576) Q. Have you got those with you? A. I haven't got them, no, sir.

Mr. Fennelly: Have the Government got them?

Mr. MacMahon: I don't know, Mr. Fennelly.

Mr. Fennelly: Could I see Exhibit 40, please, and Exhibit 41.

Q. Now, then, coming to Crescent Music Company—

Mr. MacMahon: Your Honor, I find we do have photostats of the checks Mr. Fennelly just asked about.

The Court: Very well.

Mr. MacMahon: (To Mr. Pierpoint) Do we have them?

We have to furnish them to him during the recess.

The Court: Checks? You didn't ask for checks, did you? Didn't you ask for 40 and 41?

Mr. Fennelly: No, the witness had testified that he sent it by two checks.

Could I have them, please?

Mr. MacMahon: We haven't them. We will furnish them at recess.

Q. Now, let us go back to Louisiana Mint. Would you tell me per year, starting from the beginning, the total drawings of Mr. Costello from Louisiana Mint Company by year? A. By fiscal year, sir? It ran (577) on a fiscal year basis.

Q. Well, you had better give us the dates when you do. A. Fiscal year December '43 through November '44, $75,375.

The Court: Just a minute now. What was that figure?

The Witness: $75,375.

The Court: All right.

The Witness: Fiscal year beginning December